

Peter Johnson (State Bar No. 252542)
 Peter Johnson Law, P.C.
 407 N. Pacific Coast Hwy, 651
 Redondo Beach, California 90277
 Telephone: (310) 295-1785
 Facsimile: (213) 319-2907
 Email: peter@peterjohnsonlaw.com

Attorney for Defendant
 FRANCISCO SORIA

**UNITED STATES DISTRICT COURT
 CENTRAL DISTRICT OF CALIFORNIA
 WESTERN DIVISION**

UNITED STATES OF AMERICA,)	Case No. 2:22-CR-00335-MWF-01
)	
Plaintiff,)	DEFENDANT FRANCISCO
v.)	SORIA'S SENTENCING
)	MEMORANDUM
)	
FRANCISCO SORIA)	Hearing Date: June 3, 2024
)	Time: 2:00 p.m.
Defendant.)	Location: Courtroom 5A
)	The Honorable Michael W.
)	Fitzgerald

Defendant Francisco Soria ("Mr. Soria"), by and through counsel of record,
 Peter Johnson, respectfully submits the following sentencing memorandum to
 recommend a custodial sentence of 180 months, the statutory mandatory minimum.

DATED: May 21, 2024

Respectfully submitted,

By: _____/s/_____
 Peter Johnson
 Attorney for Defendant
 Francisco Soria

Table of Contents

1		
2	I. INTRODUCTION	1
3	II. BACKGROUND	1
4	III. U.S. PROBATION AND GOVERNMENT RECOMMENDATIONS....	2
5	A. Summary of U.S. Probation’s guideline calculation and	
6	recommendation.....	2
7	B. Summary of the Government’s guideline calculation and	
8	recommendation.....	3
9	C. Objections to the PSR and proposed guideline calculation.....	6
10	IV. THE FACTORS UNDER 18 U.S.C. § 3553(a) SUPPORT A CUSTODIAL	
11	SENTENCE OF NO MORE THAN 180 MONTHS.....	7
12	A. The nature and circumstances of the offense support a sentence of no	
13	more than 180 months.	7
14	B. Mr. Soria’s personal history and characteristics support a sentence of no	
15	more than 180 months.	8
16	C. A sentence of no more than 180 months would reflect the seriousness of	
17	the offense, promote respect for the law, provide just punishment for the	
18	offense, afford adequate deterrence to criminal conduct, and address the	
19	need for a sentence imposed to protect the public from further crimes.....	10
20	V. ADDITIONAL SENTENCING RECOMMENDATIONS.	11
21	A. Mr. Soria requests a recommendation that he be housed as close as	
22	possible to Los Angeles, so that he can maintain visits with his parents,	
23	siblings, and children.	11
24	B. Mr. Soria requests a recommendation for the B.O.P.’s Residential Drug	
25	Abuse Program (“R.D.A.P.”).....	12
26	VI. CONCLUSION.....	12
27		
28		

SENTENCING MEMORANDUM

I. INTRODUCTION

Mr. Soria, a 30-year-old father of three young children, is faced with a difficult and imposing term of incarceration. As a young boy he faced overwhelming obstacles and challenges, beginning with his upbringing in violent and poverty-stricken neighborhoods and his struggle with a learning disability that went largely unaddressed. These hardships were compounded by his exposure to drug use at a young age, which unfortunately led to his initial entanglement with the criminal justice system. Despite these adversities, Mr. Soria has never joined a gang and recently has shown a genuine desire to turn his life around and break free from the cycles of his past.

On June 3, 2024, he will appear for sentencing. At that time, undersigned counsel will request a sentence of no more than 180 months in prison, the mandatory minimum sentence. Such a sentence is more than necessary to reflect the seriousness of the offense, promote respect for the law, and provide just punishment, while also considering Mr. Soria's potential for rehabilitation and the well-being of his family.

II. BACKGROUND

On March 11, 2024, the Court accepted Mr. Soria's guilty plea to Counts 1, 7, and 9 of the Indictment, based upon a plea agreement. (Docs. #131, 129.) As the Court knows, prior to pleading guilty, on February 5, 2024, Mr. Soria filed a motion to suppress evidence and a motion to dismiss Count 9. (Docs. #112, 113.) On March 4, 2024, the Court denied Mr. Soria's motion to dismiss. (Doc. #115.) Likewise, after

considering written and oral arguments, on March 7, 2024, the Court denied Mr. Soria's motion to suppress. (Doc. #128.)¹ On April 30, 2024, U.S. Probation filed its recommendation letter and presentence investigation report ("PSR"). (Docs. #142, 143.) On May 20, 2024, the government filed its sentencing position paper. (Doc. #151.)

III. U.S. PROBATION AND GOVERNMENT RECOMMENDATIONS.

Below, Mr. Soria provides a summary of U.S. Probations' sentencing guideline calculations (part A), a summary of the government's guideline calculation and recommendation (part B), and Mr. Soria's objections and corrections to the PSR (part C).

A. Summary of U.S. Probation's guideline calculation and recommendation.

In its PSR, U.S. Probation recommended the following guideline calculation:

Base Offense Level:	32	USSG §§2D1.1(a)(5), (c)(4)
---------------------	----	----------------------------

Acceptance of Responsibility:	-3	USSG §§3E1.1(a), (b)
-------------------------------	----	----------------------

Total Offense Level:	29
----------------------	----

Criminal History Category:	IV
----------------------------	----

Applicable Guideline Range:	121 to 151 months [plus 60 months mandatory consecutive]
-----------------------------	--

¹ As described in the plea agreement, Mr. Soria reserves the right to seek appellate review of this Court's determinations of Mr. Soria's motions to suppress and dismiss. Should Mr. Soria prevail on appeal, he may withdraw his guilty plea (Doc. # 129 at ¶3.)

1 In its recommendation letter, U.S. Probation recommended the following
2 sentence based on Mr. Soria's guilty plea to Counts 1, 7, and 9 of the Indictment:

- 3 • 181 months of incarceration;²
- 4 • 5 years of supervised release;
- 5 • \$300 special assessment; and
- 6 • fine waived pursuant to U.S.S.G. § 5E1.2(a)

7 (Doc. #142, at 1-2.)

8 **B. Summary of the Government's guideline calculation and**
9 **recommendation.**

10 The government disagrees with U.S. Probation's recommendation of 181
11 months and requests a sentence of 195 months. (Doc. #151, at 2). It bases this
12 recommended sentence on its refusal to move for a one-level reduction pursuant to
13 U.S.S.G. § 3E1.1(b) and its view that the offense level should be 30, not 29. *Id.* To
14 respond, the court needs context.

15 Mr. Soria is already being punished by the government for asserting his
16 constitutional rights. Prior to Mr. Soria filing motions to assert his constitutional
17 rights under the Second and Fourth Amendments, the government offered Mr. Soria
18 a plea agreement that did not include the 5-year mandatory minimum charge in Count
19 9 of the Indictment. However, after litigating the motions, the government insisted on
20 including Count 9 in the new plea agreement, which elevated the mandatory minimum
21 sentence from 10 years to 15 years. Thu, even without the motion pursuant to
22
23
24
25
26

27 ² 121 months on Counts 1 and 9 to be served concurrently, and 60 months on Count
28 7 to be served consecutively, totaling to 181 months of incarceration.

1 U.S.S.G. § 3E1.1(b), the government is punishing Mr. Soria for filing good faith
2 motion to assert and protect his fundamental rights under the United States
3 Constitution.

4 Further, the two motions were not frivolous. Mr. Soria filed the first motion
5 arguing the unconstitutionality of 18 U.S.C. § 922(g). On March 4, 2024, the Court
6 denied that motion. (Doc. #115.) However, on May 9, 2024, in a separate case raising
7 the same legal issue, the Ninth Circuit held 18 U.S. C. § 922(g) unconstitutional as
8 applied in that case because it violated the defendant's Second Amendment's right to
9 bear arms. *United States v. Duarte* (No. 22-50048, 9th Cir. published May 9, 2024,
10 opinion by Carlos Bea, Circuit Judge.) As that Court explained, the government must
11 prove that founding-era felonies are "distinctly similar" to the defendant's underlying
12 felonies and would have been punishable during the Founding era "either with
13 execution, with life in prison, or permanent forfeiture of the offender's estate." *Id.* at
14 61. Because Mr. Soria raised the same legal issue, it is likely that he will prevail on
15 appeal on that issue and the case will be remanded.³

16 Second, Mr. Soria filed a motion to suppress evidence asserting his Fourth
17 Amendment right to be free from unreasonable search and seizure. (Doc. #112.) That
18 issue was hotly contested and raised substantial legal issues concerning whether
19 officers violated Mr. Soria's constitutional rights. (See Doc. #112, 117, 119, 125 and
20 128). The suppression of evidence based on a constitutional violation is an important

21
22
23
24
25
26
27
28 ³ See footnote 1.

1 protection for criminal defendants and society in general. Here, if the Court recalls, it
2 was only through the filing of that motion that the government produced three body
3 camera videos that should have been produced years earlier in the initial round of
4 discovery.⁴ Therefore this motion had not only the benefit of asserting a protected
5 constitutional right, but also compelled the government and the police department to
6 produce evidence that the defendant had a right to see years earlier and perhaps could
7 have led to an earlier disposition in the case. On March 7, 2024, the Court denied that
8 motion and on March 9, 2024, Mr. Soria entered a conditional plea agreement.⁵

11 Based on the above, the government act of imposing punishment for asserting
12 fundamental constitutional rights and failure to move for a one-level reduction
13 pursuant to U.S.S.G. § 3E1.1(b) is not rationally related to any legitimate government
14 objective. In neither motion did Mr. Soria claim innocence but instead raised
15 constitutional issues. Moreover, an Assistant United States Attorney's preparation for
16 a suppression hearing, such as interviewing witnesses, gathering and preparing
17 exhibits, and re-examining its case to search for discovery that it may have
18
19
20
21

22 ⁴ As described in Mr. Soria's Motion to Suppress (Doc. #112), at the time of its filing,
23 the government had not disclosed any video of the search (Doc. #112, at 17.)
24 Moreover, based on email correspondence with the government, undersigned counsel
25 was advised that there were **no videos** and no map or diagrams associated with the
26 search (Doc. #112-1, Exhibit D, Declaration of Peter Johnson, ¶5.) However, only
27 **after** the filing of that motion did the government eventually disclose body-camera
28 footage of the search, which was incorporated into Mr. Soria's Reply in support of his
Motion to Suppress (Doc. #119, at 3, *see also* Doc. #119, Exhibit R, Declaration of
Peter Johnson, ¶2.)

⁵ *See* footnote 1.

1 inadvertently failed to produce, often involves some of the same groundwork needed
2 for trial, especially as here, in a single defendant trial. This act of punishing
3 defendants, particularly indigent defendants, for asserting their right could have a
4 chilling and damaging effect on future cases, if defendants must now weigh whether
5 or not they should file legitimate pretrial motions and face the risk that the
6 government may force an additional half-decade as a part of their plea and then refuse
7 to move for the third level reduction pursuant to U.S.S.G. § 3E1.1(b)
8
9

10 The one-level increase is significant. In 2021, the Supreme Court was asked to
11 address the issue a similar issue. *See Longoria v. United States*, 141 S. Ct. 978 (2021)
12 (denying petition for a writ of certiorari). While the Supreme Court did not accept the
13 issue for certiorari review, Justice Sotomayor issued a statement, joined by Justice
14 Gorsuch, urging the U.S. Sentencing Commission to “address this issue in the first
15 instance” noting that “[t]he effect of a one-level reduction can be substantial.”
16 *Longoria*, 141 S. Ct. at 979. Here, the additional one-level adds over one year to the
17 mandatory minimum and advisory guideline sentence and, as explained more fully
18 below, results in a sentence that is more than necessary to meet the goals of
19 sentencing.
20
21
22

23 **C. Objections to the PSR and proposed guideline calculation.**

24 1. Objections

25 Mr. Soria herein notes his objection to ¶4 of the PSR, and any additional
26 reference to Count 9 of the Indictment, which charges Mr. Soria as being a felon in
27 possession of a firearm, in violation of 18 U.S.C. § 922(g). As noted above, the Ninth
28

1 Circuit recently held in *United States v. Duarte* (No. 22-50048, 9th Cir. published May 9,
2 2024) that 18 U.S.C. § 922(g) is unconstitutionally as applied in that case. Therefore,
3 Mr. Soria continues to preserve his objection to his conviction under 18 U.S.C. §
4 922(g).
5

6 2. Guideline Calculation

7 Pursuant to the plea agreement, Mr. Soria has no other objections to the
8 statement of facts regarding the offense or guideline calculation. Mr. Soria also
9 concurs with the decision by U.S. Probation to not apply the 2-level enhancement for
10 possession of a dangerous weapon. (PSR at ¶46.)
11
12

13 **IV. THE FACTORS UNDER 18 U.S.C. § 3553(a) SUPPORT A** 14 **CUSTODIAL SENTENCE OF NO MORE THAN 180 MONTHS.**

15 **A. The nature and circumstances of the offense support a sentence of no** 16 **more than 180 months.**

17 Pursuant to the plea agreement, between February 2020 and July 2020, Mr.
18 Soria and co-defendants named in the Indictment conspired to distribute and possess
19 with intent to distribute controlled substances, in violation of 24 U.S.C. §§ 846,
20 841(a)(1), 841(b)(1)(A)(viii), as described in Count 1. (PSR at ¶2.) Further, on May 8,
21 2020, Mr. Soria was in possession of a firearm in furtherance of drug trafficking
22 crimes in violation of 18 U.S.C. § 924(c)(1)(A)(i), as described in Count 7, and was a
23 felon in possession of a firearm and ammunition, in violation of 18 U.S.C. §§
24 922(g)(1), 924(A)(2), as described in Count 9. (PSR at ¶¶3-4.) Because of the 10-year
25
26
27
28

1 and 5-year mandatory minimums applied to these Counts, Mr. Soria's lowest eligible
2 sentence is 15 years, or 180 months of incarceration.

3 **B. Mr. Soria's personal history and characteristics support a sentence of no**
4 **more than 180 months.**

5 Mr. Soria, at 30-years-old, has seen a challenging life fraught with substance
6 abuse, poor decision-making, as well as consequences of a learning disability that have
7 rippled throughout his life. (PSR at ¶101.) Mr. Soria, the middle child of three, was
8 raised in a low-income family by his parents. (PSR at ¶82.) His parents moved from
9 Tijuana, Mexico to the United States when they were only 15 or 17 years old. Mr.
10 Soria's mom was unemployed when he was growing up but sold items like baskets at
11 the local swap meet. (PSR at ¶ 82.) His father was a mechanic and worked from
12 wherever they were living. They lived in various housing projects between Compton
13 and Watts during his childhood. (PSR at ¶ 87.)

14 Mr. Soria has a good relationship with his family, speaking with his father
15 weekly, and his mother and sister daily since his arrest. (PSR ¶¶ 80-81.) Mr. Soria's
16 mother, Gloria, writes that her son is a "a person of good feelings, hardworking, and
17 respectful of [his] family" *See* Exhibit B-1 and B-2 – Character Letter by Gloria Ramos
18 Castro.⁶ Mr. Soria's sister, Tania, notes that her brother is a "compassionate,
19 affectionate, thoughtful, and very supportive person. Even though his look can be
20

21
22
23
24
25
26
27
28 ⁶ Exhibit B-1 is Ms. Gloria Ramos Castro's original letter written in Spanish. Exhibit
B-2 is a Google translation of the letter.

1 deceiving[, h]e is a good person deep down with good feelings and intentions.” *See*
2 Exhibit C – Character Letter by Tania Soria.

3 Additionally, Mr. Soria has three young children, aged 12, 4, and 3. Mr. Soria’s
4 mother explains that his “only concern is getting enough money so that his children
5 don’t lack for anything . . . he tries to transmit to them what we in the family teach
6 him, something that I do feel proud of.” *See* Exhibit B-2. Likewise, Mr. Soria’s sister
7 adds that Mr. Soria has “always been a very responsible father to his children. He
8 would spoil them and love them unconditionally. And always try to give them a better
9 life.” *See* Exhibit C.

10 Mr. Soria acknowledges that he has had frequent contacts with law
11 enforcement from a young age. (PSR at ¶¶63-68.) However, in mitigation, the poor
12 decision-making is, at least in part, a consequence of Mr. Soria’s early exposure to
13 marijuana and methamphetamine. (PSR at ¶¶ 95-98.) In further mitigation, despite his
14 drug abuse and criminal history at a young age, Mr. Soria never joined a gang.

15 Indeed, a separate yet equally relevant piece of Mr. Soria’s poor decision-
16 making is his early struggles with a learning disability. *See* Exhibit C. Though he was
17 not formally diagnosed or placed in special education courses for his learning
18 disability, Mr. Soria faced many challenges in school. (PSR at ¶101.) He has difficulty
19 staying on task, especially when in school. *Id.* Mr. Soria reached the 10th grade before
20 dropping out, and while he has taken some courses since that time, Mr. Soria does not
21 have a G.E.D. (PSR at ¶¶99-100.) Mr. Soria also went to the hospital in 2021 because
22 he was hearing voices. (PSR at ¶ 93.) Mr. Soria’s sister explains that Mr. Soria,
23
24
25
26
27
28

1 “struggled academically. He had a learning disability. He struggle[d] with reading and
2 writing. It was hard for him to focus in class.” *See* Exhibit C.

3 In sum, Mr. Soria’s personal history supports a sentence of no more than the
4 mandatory minimum sentence of 180 months. There is little doubt that had Mr. Soria
5 received proper treatment for his learning disability, he could have avoided exposure
6 to the troubling path of drugs and crime that he found himself on. Upon his release,
7 Mr. Soria is eager to reshape his life to better himself, his family, and his children. An
8 entrepreneur at heart, Mr. Soria looks forward to following in his mother footsteps
9 and work at a swap meet, and eventually own his own business. (PSR ¶89.)

12 **C. A sentence of no more than 180 months would reflect the seriousness of**
13 **the offense, promote respect for the law, provide just punishment for the**
14 **offense, afford adequate deterrence to criminal conduct, and address the**
15 **need for a sentence imposed to protect the public from further crimes.**

16 Mr. Soria has remained in continuous custody since his arrest in the summer of
17 2022. A 15-year sentence is an incredibly severe punishment that more than captures
18 the magnitude to which Mr. Soria has pleaded guilty to. As explained above, Mr. Soria
19 has a close, loving family that he has regular communication with. Given the certainty
20 of a lengthy period of incarceration, Mr. Soria will miss years of family gatherings,
21 festivities, and other important memories. Specifically with his three-year-old son
22 Xaiver, Mr. Soria will be absent from the many milestones that all parents of young
23 children relish. Of course, these factors are beyond the Court’s control. Yet, these
24 foundational events that Mr. Soria will be prevented from attending underscore the
25 seriousness and severity of Mr. Soria’s sentence. In addition, a 3-year term of
26
27
28

1 supervised release will afford Mr. Soria the opportunity to transition back into society
2 with the prospect that he will be able to maintain his sobriety.

3 Imposing no more than the mandatory minimum applicable here likewise
4 promotes respect for the law, provides just punishment, and reflects the seriousness
5 of the pleaded counts. Mr. Soria recognizes that U.S. Probation's recommendation is
6 but one month above Mr. Soria's requested sentence. Additionally, Mr. Soria
7 understands that the Court's sentencing discretion is ultimately limited because of the
8 mandatory minimums applicable here. Nonetheless, when considering this sentence in
9 its totality, every single day counts for Mr. Soria. The prospect of being released one
10 month sooner, while it may appear minuscule on paper, matters to Mr. Soria, his
11 family, and his children.

12 **V. ADDITIONAL SENTENCING RECOMMENDATIONS.**

13 **A. Mr. Soria requests a recommendation that he be housed as close as possible to Los Angeles, so that he can maintain visits with his parents, siblings, and children.**

14 Mr. Soria recognizes that the Bureau of Prisons ("B.O.P.") will ultimately
15 decide where he will be housed to serve his sentence. Nonetheless, Mr. Soria
16 respectfully requests that the Court recommends that he be housed as close as
17 possible to Los Angeles, so that he can maintain a relationship with his parents,
18 siblings and children.

19 //

20 //

21 //

B. Mr. Soria requests a recommendation for the B.O.P.'s Residential Drug Abuse Program ("R.D.A.P.").

Beginning at a young age, Mr. Soria began to experiment and abuse drugs. At age 13, Mr. Soria first tried marijuana and other inhalants. (PSR at ¶95.) At age 16, he first tried alcohol. (PSR at ¶96.) Additionally, Mr. Soria first tried methamphetamine at age 18, which he abused daily until his arrest and is his drug of choice. (PSR at ¶97.) Exposure to and abuse of these drugs, at such a young age, have undoubtedly impacted Mr. Soria's development and growth. Considering this, Mr. Soria is now interested in receiving substance abuse treatment so that he can resolve his addiction and better his life upon his release. (PSR at ¶98.) He believes that he can stay sober with the help of treatment and by staying away from negative influences. Therefore, Mr. Soria requests the Court recommend that he be enrolled in R.D.A.P. U.S. Probation concurs that Mr. Soria is a suitable candidate for R.D.A.P. (Doc. #142, at 2.)

VI. CONCLUSION

Considering the above, Mr. Soria respectfully requests that the Court sentence him to the statutory mandatory minimum of 180 months, followed by a three-year term of supervised release.

DATED: May 21, 2024

Respectfully submitted,

By: _____/s/_____
 Peter Johnson
 Attorney for Defendant
 Francisco Soria